

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
APPEAL FROM ORDER NO.847 OF 2006
IN
NOTICE OF MOTION NO.1147 OF 2005
IN
S.C.SUIT NO.1358 OF 2005

Shri Sharad Motiram Mhatre. .. Appellant
(Org.Plaintiff)

Vs.

Mumbai Mahanagar Pradesh Vikas
Pradhikaran (MMRDA). .. Respondent
(Org.Defendant)

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Shri Ashok Mishra h/f Ms Geeta M. Bhoir for the
appellant/org.plaintiff.

Ms Kiran Bagalia for the respondent.

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APPEAL FROM ORDER NO.848 OF 2006
IN
NOTICE OF MOTION NO.1146 OF 2005
IN
S.C.SUIT NO.1357 OF 2005

Shri Dyaneshwar M. Patil. .. Appellant
(Org.Plaintiff)

Vs.

Mumbai Mahanagar Pradesh Vikas
Pradhikaran (MMRDA). .. Respondent
(Org.Defendant)

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Shri Ashok Mishra h/f Ms Geeta M. Bhoir for the
appellant/org.plaintiff.

Ms Kiran Bagalia for the respondent.

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CORAM: R.M.S.KHANDEPARKAR, J

DATED: 13TH DECEMBER, 2006

ORAL ORDER:

1. Since common question of law and facts arise in both the appeals, they were heard together and are being disposed of by this common order.

2. Heard the learned advocates for the parties. The appellants challenge the impugned order dated 13th November, 2006 passed in the Notices of Motion Nos.1147 of 2005 in Suit No.1358 of 2005 and 1146 of 2005 in Suit No.1357 of 2005 thereby the said notices of motion have been rejected. The appellants/original plaintiffs had taken out the said notices of motion for interim reliefs in the nature of temporary injunction to restrain the respondents from demolishing the suit premises.

3. Upon hearing the learned advocates for the parties and on perusal of the records, it is seen that the sole grievance of the appellants relates to the insufficiency of the area in the alternative premises

allotted for occupation of the appellants. Undisputedly, the appellants have no independent right to the area of the suit premises and the only right which is claimed is on the basis of the occupation thereof prior to 1st January, 1995. It is not in dispute that under the Scheme drawn by the respondents, the appellants have been offered alternative premises. It may be true that the premises which are allotted to the appellants are not at the same place and may be of a lesser in area. However, once it is undisputed that the alternative premises have been offered under a Scheme which is applicable to all such occupants and there is no discrimination made in relation to the appellants herein as compared to the other occupants in the locality, it cannot be said that the appellants have made out any prima facie case for grant of relief, as prayed for. All other issues, which are sought to be raised, can be gone into the main suits and it will be too premature to grant any interim relief without there being any prima facie case made out for the same by the appellants.

4. For the reasons stated, therefore, no fault can be found with the impugned order which has been passed after taking into consideration the points

relating to the prima facie case, balance of convenience and irreparable loss. Hence, there being neither any illegality disclosed in the impugned order, nor the findings arrived at by the Court below can be said to be contrary to the materials on record, nor there is any jurisdictional error, nor it can be said that the Court below has acted illegally in exercise of its discretion in refusing the interim reliefs to the appellants, there is no case made out for interference in the impugned order and in the appeals, and hence, the appeals are hereby rejected.

(R.M.S.KHANDEPARKAR, J)